

HOUSE BILL NO. 726

INTRODUCED BY GUTSCHE, WINDHAM

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING THE DEPARTMENT OF CORRECTIONS TO CONTRACT WITH ~~PRERELEASE PROGRAMS~~ MONTANA CORPORATIONS TO OPERATE DAY REPORTING PROGRAMS TO PROVIDE AN ALTERNATE SENTENCING OPTION AND TO SANCTION PROBATION VIOLATORS; PROVIDING THAT A CONVICTED PERSON PAY A \$50 PRESENTENCE REPORT FEE TO FUND THE ALTERNATE SENTENCING OPTION; AMENDING SECTIONS 46-18-111, 46-18-201, 46-18-225, 46-23-1015, 53-1-203, AND 53-1-501, MCA; AND PROVIDING ~~AN~~ EFFECTIVE DATE DATES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

SECTION 1. SECTION 46-18-111, MCA, IS AMENDED TO READ:

"46-18-111. Presentence investigation -- when required. (1) Upon the acceptance of a plea or upon a verdict or finding of guilty to one or more felony offenses, the district court shall direct the probation officer to make a presentence investigation and report. The district court shall consider the presentence investigation report prior to sentencing. If the defendant was convicted of an offense under 45-5-502, 45-5-503, 45-5-504, 45-5-505, 45-5-507, 45-5-625, or 45-5-627, the investigation must include a psychosexual evaluation of the defendant and a recommendation as to treatment of the defendant in the least restrictive environment, considering the risk the defendant presents to the community and the defendant's needs, unless the defendant was sentenced under 46-18-219. The evaluation must be completed by a sex offender therapist who is a member of the Montana sex offender treatment association or has comparable credentials acceptable to the department of labor and industry. The psychosexual evaluation must be made available to the county attorney's office, the defense attorney, the probation and parole officer, and the sentencing judge. All costs related to the evaluation must be paid by the defendant. If the defendant is determined by the district court to be indigent, all costs related to the evaluation are the responsibility of the district court and must be paid by the county or the state, or both, under Title 3, chapter 5, part 9.

(2) The court shall order a presentence report unless the court makes a finding that a report is unnecessary. Unless the court makes that finding, a defendant convicted of any offense not enumerated in subsection (1) that may result in incarceration for 1 year or more may not be sentenced before a written

1 presentence investigation report by a probation and parole officer is presented to and considered by the district
2 court. The district court may order a presentence investigation for a defendant convicted of a misdemeanor only
3 if the defendant was convicted of a misdemeanor that the state originally charged as a sexual or violent offense
4 as defined in 46-23-502.

5 (3) The defendant shall pay to the department of corrections a \$50 fee at the time that the report is
6 completed, unless the court determines that the defendant is not able to pay the fee within a reasonable time.
7 The fee may be retained by the department and used to finance contracts entered into under 53-1-203(4)."
8

9 **Section 2.** Section 46-18-201, MCA, is amended to read:

10 **"46-18-201. Sentences that may be imposed.** (1) (a) Whenever a person has been found guilty of an
11 offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may defer imposition
12 of sentence, except as otherwise specifically provided by statute, for a period:

13 (i) not exceeding 1 year for a misdemeanor or for a period not exceeding 3 years for a felony; or

14 (ii) not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony if a
15 financial obligation is imposed as a condition of sentence for either the misdemeanor or the felony, regardless
16 of whether any other conditions are imposed.

17 (b) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the
18 case of an offender who has been convicted of a felony on a prior occasion, whether or not the sentence was
19 imposed, imposition of the sentence was deferred, or execution of the sentence was suspended.

20 (2) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty
21 or nolo contendere, a sentencing judge may suspend execution of sentence, except as otherwise specifically
22 provided by statute, for a period up to the maximum sentence allowed or for a period of 6 months, whichever
23 is greater, for each particular offense.

24 (3) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty
25 or nolo contendere, a sentencing judge may impose a sentence that may include:

26 (a) a fine as provided by law for the offense;

27 (b) payment of costs, as provided in 46-18-232, or payment of costs of court-appointed counsel as
28 provided in 46-8-113;

29 (c) a term of incarceration, as provided in Title 45 for the offense, at a county detention center or at a
30 state prison to be designated by the department of corrections;

1 (d) commitment of:

2 (i) an offender not referred to in subsection (3)(d)(ii) to the department of corrections, with a
3 recommendation for placement in an appropriate correctional facility or program; however, all but the first 5 years
4 of the commitment to the department of corrections must be suspended; or

5 (ii) a youth transferred to district court under 41-5-206 and found guilty in the district court of an offense
6 enumerated in 41-5-206 to the department of corrections for a period determined by the court for placement in
7 an appropriate correctional facility or program;

8 (e) with the approval of the facility or program, placement of the offender in a community corrections
9 facility or program as provided in 53-30-321;

10 (f) with the approval of the prerelease center or prerelease program and confirmation by the department
11 of corrections that space is available, placement of the offender in a prerelease center or prerelease program
12 for a period not to exceed 1 year;

13 (g) chemical treatment of sex offenders, as provided in 45-5-512, if applicable, that is paid for by and
14 for a period of time determined by the department of corrections, but not exceeding the period of state
15 supervision of the person; or

16 (h) any combination of subsections (2) through (3)(g).

17 (4) When deferring imposition of sentence or suspending all or a portion of execution of sentence, the
18 sentencing judge may impose upon the offender any reasonable restrictions or conditions during the period of
19 the deferred imposition or suspension of sentence. Reasonable restrictions or conditions imposed under
20 subsection (1)(a) or (2) may include but are not limited to:

21 (a) limited release during employment hours as provided in 46-18-701;

22 (b) incarceration in a detention center not exceeding 180 days;

23 (c) conditions for probation;

24 (d) payment of the costs of confinement;

25 (e) payment of a fine as provided in 46-18-231;

26 (f) payment of costs as provided in 46-18-232 and 46-18-233;

27 (g) payment of costs of court-appointed counsel as provided in 46-8-113;

28 (h) with the approval of the facility or program, an order that the offender be placed in a community
29 corrections facility or program as provided in 53-30-321;

30 (i) with the approval of the prerelease center or prerelease program and confirmation by the department

1 of corrections that space is available, an order that the offender be placed in a prerelease center or prerelease
2 program for a period not to exceed 1 year;

3 (j) community service;

4 (k) home arrest as provided in Title 46, chapter 18, part 10;

5 (l) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116;

6 (m) with the approval of the department of corrections and with a signed statement from an offender
7 that the offender's participation in the boot camp incarceration program is voluntary, an order that the offender
8 complete the boot camp incarceration program established pursuant to 53-30-403;

9 (n) participation in a day reporting program provided for in 53-1-203;

10 ~~(n)(o)~~ any other reasonable restrictions or conditions considered necessary for rehabilitation or for the
11 protection of the victim or society; or

12 ~~(o)(p)~~ any combination of the restrictions or conditions listed in subsections (4)(a) through ~~(4)(n)~~ (4)(p).

13 (5) In addition to any other penalties imposed, if a person has been found guilty of an offense upon a
14 verdict of guilty or a plea of guilty or nolo contendere and the sentencing judge finds that a victim, as defined
15 in 46-18-243, has sustained a pecuniary loss, the sentencing judge shall, as part of the sentence, require
16 payment of full restitution to the victim, as provided in 46-18-241 through 46-18-249, whether or not any part of
17 the sentence is deferred or suspended.

18 (6) In addition to any of the penalties, restrictions, or conditions imposed pursuant to subsections (1)
19 through (5), the sentencing judge may include the suspension of the license or driving privilege of the person
20 to be imposed upon the failure to comply with any penalty, restriction, or condition of the sentence. A suspension
21 of the license or driving privilege of the person must be accomplished as provided in 61-5-214 through 61-5-217.

22 (7) In imposing a sentence on an offender convicted of a sexual or violent offense, as defined in
23 46-23-502, the sentencing judge may not waive the registration requirement provided in Title 46, chapter 23,
24 part 5.

25 (8) If a felony sentence includes probation, the department of corrections shall supervise the offender
26 unless the court specifies otherwise."
27

28 **Section 3.** Section 46-18-225, MCA, is amended to read:

29 **"46-18-225. Sentencing of nonviolent felony offenders -- criteria -- alternatives to be considered**
30 **-- court to state reasons for imprisonment.** (1) In sentencing a nonviolent felony offender, the sentencing

1 judge shall first consider alternatives to imprisonment of the offender in a state prison, including placement of
2 the offender in a community corrections facility or program, a prerelease center, ~~or a prerelease program, or a~~
3 day reporting program PROVIDED FOR IN 53-1-203. In considering alternatives to imprisonment, the sentencing
4 judge shall examine the sentencing criteria contained in subsection (2).

5 (2) Prior to sentencing a nonviolent felony offender to whom 46-18-219 does not apply to a term of
6 imprisonment in a state prison, the sentencing judge shall take into account whether:

7 (a) the interests of justice and the needs of public safety truly require the level of security provided by
8 imprisonment of the offender in a state prison;

9 (b) the needs of the offender can be better served in the community or in a facility or program other than
10 a state prison;

11 (c) there are substantial grounds tending to excuse or justify the offense, though failing to establish a
12 defense;

13 (d) the offender acted under strong provocation;

14 (e) the offender has made restitution or will make restitution to the victim of the offender's criminal
15 conduct;

16 (f) the offender has no prior history of conviction for a criminal act or, if the offender has a prior history
17 of conviction for a criminal act, the offender has led a law-abiding life for a substantial period of time before the
18 commission of the present crime;

19 (g) the offender's criminal conduct was the result of circumstances that are unlikely to recur;

20 (h) the character and attitude of the offender indicate that the offender is likely to commit another crime;

21 (i) the offender is likely to respond quickly to correctional or rehabilitative treatment; and

22 (j) imprisonment of the offender would create an excessive hardship on the offender or the offender's
23 family.

24 (3) If the judge sentences the offender to a state prison, the judge shall state the reasons why the judge
25 did not select an alternative to imprisonment, based on the criteria contained in subsection (2)."

26
27 **Section 4.** Section 46-23-1015, MCA, is amended to read:

28 **"46-23-1015. Informal probation violation intervention hearing.** (1) A probation and parole officer
29 who reasonably believes that a probationer has violated a condition of probation may initiate an informal
30 probation violation intervention hearing to gain the probationer's compliance with the conditions of probation

1 without a formal revocation hearing under 46-18-203.

2 (2) A hearings officer designated by the department shall conduct the intervention hearing.

3 (3) If the hearings officer determines by a preponderance of the evidence that the probationer has
4 violated a condition of probation, the hearings officer may order the probationer to serve up to 30 days in a
5 county detention center, with credit for time served since the time of arrest, or order the probationer to participate
6 in a day reporting program as provided for in 53-1-203 and order the probationer to pay the costs of incarceration
7 or participation in the day reporting program. The department shall pay the incarceration costs not paid by the
8 probationer.

9 (4) The provisions of chapter 9 of this title regarding release on bail of a person charged with a crime
10 are not applicable to a probationer ordered to be held in a county detention center under this section."
11

12 **Section 5.** Section 53-1-203, MCA, is amended to read:

13 **"53-1-203. Powers and duties of department of corrections.** (1) The department of corrections shall:

14 (a) adopt rules necessary to carry out the purposes of 41-5-123 through 41-5-125, rules necessary for
15 the siting, establishment, and expansion of prerelease centers, and rules for the admission, custody, transfer,
16 and release of persons in department programs except as otherwise provided by law. However, rules adopted
17 by the department may not amend or alter the statutory powers and duties of the state board of pardons and
18 parole. The rules for the siting, establishment, and expansion of prerelease centers must state that the siting is
19 subject to any existing conditions, covenants, restrictions of record, and zoning regulations. The rules must
20 provide that a prerelease center may not be sited at any location without community support. The prerelease
21 siting, establishment, and expansion must be subject to, and the rules must include, a reasonable mechanism
22 for a determination of community support or objection to the siting of a prerelease center in the area determined
23 to be impacted. The prerelease siting, establishment, and expansion rules must provide for a public hearing
24 conducted pursuant to Title 2, chapter 3.

25 (b) subject to the functions of the department of administration, lease or purchase lands for use by
26 correctional facilities and classify those lands to determine those that may be most profitably used for agricultural
27 purposes, taking into consideration the needs of all correctional facilities for the food products that can be grown
28 or produced on the lands and the relative value of agricultural programs in the treatment or rehabilitation of the
29 persons confined in correctional facilities;

30 (c) contract with private, nonprofit Montana corporations to establish and maintain prerelease centers

1 for purposes of preparing inmates of a Montana prison who are approaching parole eligibility or discharge for
2 release into the community, providing an alternative placement for offenders who have violated parole or
3 probation, and providing a sentencing option for felony offenders pursuant to 46-18-201. The centers shall
4 provide a less restrictive environment than the prison while maintaining adequate security. The centers must
5 be operated in coordination with other department correctional programs. This subsection does not affect the
6 department's authority to operate and maintain prerelease centers.

7 (d) utilize the staff and services of other state agencies and units of the Montana university system,
8 within their respective statutory functions, to carry out its functions under this title;

9 (e) propose programs to the legislature to meet the projected long-range needs of corrections, including
10 programs and facilities for the custody, supervision, treatment, parole, and skill development of persons placed
11 in correctional facilities or programs;

12 (f) encourage the establishment of programs at the local and state level for the rehabilitation and
13 education of felony offenders;

14 (g) administer all state and federal funds allocated to the department for youth in need of intervention
15 and delinquent youth, as defined in 41-5-103;

16 (h) collect and disseminate information relating to youth in need of intervention and delinquent youth;

17 (i) maintain adequate data on placements that it funds in order to keep the legislature properly informed
18 of the specific information, by category, related to youth in need of intervention and delinquent youth in
19 out-of-home care facilities;

20 (j) provide funding for and place youth who are adjudicated to be delinquent or in need of intervention
21 and who are committed to the department;

22 (k) administer youth correctional facilities;

23 (l) provide supervision, care, and control of youth released from a state youth correctional facility; and

24 (m) use to maximum efficiency the resources of state government in a coordinated effort to:

25 (i) provide for delinquent youth committed to the department; and

26 (ii) coordinate and apply the principles of modern correctional administration to the facilities and
27 programs administered by the department.

28 (2) The department and a private, nonprofit Montana corporation may not enter into a contract under
29 subsection (1)(c) for a period that exceeds 10 years. The provisions of 18-4-313 that limit the term of a contract
30 do not apply to a contract authorized by subsection (1)(c). Prior to entering into a contract for a period of 10

1 years, the department shall submit the proposed contract to the legislative audit committee. The legislative audit
2 division shall review the contract and make recommendations or comments to the legislative audit committee.
3 The committee may make recommendations or comments to the department. The department shall respond
4 to the committee, accepting or rejecting the committee recommendations or comments prior to entering into the
5 contract.

6 (3) The department of corrections may enter into contracts with nonprofit corporations or associations
7 or private organizations to provide substitute care for youth in need of intervention and delinquent youth in youth
8 correctional facilities.

9 ~~(4) The department may contract with private, nonprofit Montana corporations to operate a day reporting~~
10 ~~program in conjunction with a prerelease program as an alternate sentencing option as provided in 46-18-201~~
11 ~~AND 46-18-225 AND AS A SANCTION OPTION UNDER 46-23-1015. The department shall adopt by rule the~~
12 ~~requirements for a day reporting program, including but not limited to requirements for daily check-in,~~
13 ~~participation in programs to develop life skills, and the monitoring of compliance with any conditions of probation,~~
14 ~~such as drug testing."~~
15

16 **Section 6.** Section 53-1-501, MCA, is amended to read:

17 **"53-1-501. Rates for residential community correctional program board, room, and services**
18 **charged by the department of corrections.** (1) The department of corrections shall establish per diem rates
19 for room, board, and services for persons placed in or committed to a community correctional program operated
20 by the department of corrections. The department of corrections may adopt rules allowing it to order part of a
21 person's employment income to be used to pay restitution, fines, and child or spousal support.

22 (2) The department of corrections shall prescribe rules and procedures for the establishment of rates
23 and charges to residents or participants in any community correctional program that is under contract with the
24 department of corrections and that provides room, board, or services or any combination of room, board, and
25 services to residents of those facilities or to participants in programs. The amount assessed by these programs
26 must be subject to the resident's ability to pay, based on the rates established as the basis for assessed charges,
27 and subject to approval by the department of corrections."
28

29 **NEW SECTION. Section 7. Effective date DATES.** ~~[This act] is (1) [SECTION 1] AND THIS SECTION ARE~~
30 effective July 1, 2005.

2 - END -